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09/973,067	10/10/2001	William D. Swart	007412.00793	5257

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WASHINGTON, DC 20005-4051

EXAMINER
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SALTARELLI, DOMINIC D

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* WILLIAM D. SWART, JOHN S. MCCOSKEY,  
and MICHAEL L. ASMUSSEN

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Appeal 2009-011542  
Application 09/973,067  
Technology Center 2400

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Mailed: April 15, 2010

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Before DALE M. SHAW, *Division 2 Support Administrator*

ORDER REMANDING APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on May 27, 2009. A Docketing Notice was mailed and Appeal No 2009-011542 was assigned on June 11, 2009. A review of the application has revealed that the application was not ready for an appeal. Accordingly, the application is herewith being remanded to the Examiner. The matter requiring attention is identified below.

Claims 10 and 12-22 of the instant application contain functional language that may be indefinite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph. . *See Ex Parte Rodriquez*, 2009 WL 3756279 (BPAI 2009) and *Aristocrat Techs. Austl. Pty. Ltd. v. It'l. Game Tech.*, 521 F.3d 1328 (Fed Cir. 2008). On September 2, 2008 the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled “Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph”, located at: [http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section\\_112\\_6th\\_09\\_02\\_2008.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf) . Thus, there is a question as to whether claims 10 and 12-22, and the claims which depend upon these claims, meet the requirements of being definite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to determine if claims 10 and 12-22, and the claims which depend upon these claims, meet the requirements of 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

If there are any questions pertaining to this order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/eld

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